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In re Reissue Application of	:	
Raymond G. Gallagher	:	DECISION GRANTING
Application No. 09/399,545	:	PETITION
Filed: September 20, 1999	:	
Original Patent No.: 5,813,191	:	
Issue Date: September 29, 1998	:	
Attny Dckt No. 1185R1	:	

This is a decision on the petition filed under 37 CFR 1.181 December 14, 1999, which is being treated as a petition under 37 CFR 1.182 requesting that the above-identified reissue application be accorded a filing date of September 20, 1999, and the delay in supplying patented claims 1-34 be excused.

The petition is granted.

The application was deposited on September 20, 1999, as an application for reissue of U.S. Patent No. 5,813,191. The filing included new claims 35-55, but no copy of claims 1-34 of the issued patent. Therefore, on October 18, 1999, Application Processing Division mailed a "Notice" indicating various options for applicant, *inter alia*, the submission claims 1-34 and a supplemental declaration and stating that the filing date would be the date of receipt of the omitted claims.

In response, on December 22, 1995, claims 1-34, a supplemental reissue declaration, and the present petition were filed. Petitioner asserts that original patent claims 1-34 were unintentionally omitted, and is willing to accept the later filing date, but also seeks any other equitable relief as may be proper.

Since this is a reissue, the specification must include the entire specification and claims of the patent, with the matter to be omitted by reissue enclosed in brackets. 37 CFR 1.173. Therefore, the application papers filed on September 20, 1999,

were clearly incomplete. However, since this is a reissue application and claims 1-34 are identified in the petition as the original patent claims, the late submission of claims 1-34 does not raise any issue of new matter, and further, these patented claims were a matter of public record as of September 20, 1999. Still further, inspection of the reissue declaration under 37 CFR 1.175 that accompanied the instant application papers as filed on September 20, 1999, does not reveal any indication that applicant sought to cancel, by this reissue, any of the original patent claims. Rather, petitioner clearly sought to retain the original patent claims, and, in addition, sought to add, by reissue, the subject matter of the additional claims. Also, the application as deposited on September 20, 1999, did include at least one claim, and, as such, was properly accorded a filing date. See 35 USC 111.

Therefore, on petition under 37 CFR 1.182, the Director may excuse the delay in supplying the issued claims of the patent, and accord this reissue application the filing date of September 20, 1999. The Notice of October 18, 1999, is vacated.

Receipt is acknowledged of the supplemental declaration filed on December 14, 1995.

The application is being returned to the Office of Initial Patent Examination, Customer Corrections, for further processing as a reissue application with a filing date of September 20, 1999, using the copy of claims 1-34 supplied on December 14, 1999, and an indication that 55 claims were present on filing.

Telephone inquiries related to this decision should be addressed to the undersigned at (703) 305-1820.

Brian Hearn
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